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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

H1248

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on July 1, 2008

Signature /Christine Gillroy/

Typed or printed name Christine Gillroy

Application Number

10/791,557

Filed

March 2, 2004

First Named Inventor

Marufa Kaniz

Art Unit

2134

Examiner

Jason Kai Yin Gee

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Thomas G. Eschweiler/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Thomas G. Eschweiler

Typed or printed name

☒ attorney or agent of record.
Registration number 36,981

(216) 502-0600

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

July 1, 2008

Registration number if acting under 37 CFR 1.34

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☐ *Total of forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re **PATENT** application of:

Applicant: Marufa Kaniz
Application No.: 10/791,557
For: TWO PARALLEL ENGINES FOR HIGH SPEED TRANSMIT IPSEC
PROCESSING
Filing Date: March 2, 2004
Examiner: Jason Kai Yin Gee
Art Unit: 2134

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Favorable reconsideration of the above-identified application is respectfully requested in view of the following remarks.

REMARKS

Claims 1-10 are pending and are all rejected. Reconsideration of the application in light of the following remarks is respectfully requested.

I. REJECTIONS CLAIMS 1-10 UNDER 35 U.S.C. § 103(a)

Claims 1 was rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2003/0115447(Pham et al.) in view of U.S. Patent Application Publication 2004/0062267 (Minami et al.), and further in view of U.S. Patent Application Publication 2004/0243745 (Bolt et al.). The remaining claims depend on claim 1.

- i. The Office Action fails to satisfy the necessary requirements for establishing a prima facie case of obviousness for rejection of claim 1, as modifying Pham et al. with Minami et al. would render the prior art invention being modified unsatisfactory for its intended purpose.***

To establish a *prima facie* case of obviousness there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Further, ***if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.*** In re Gordon, 733 F.2d 900 (Fed. Cir. 1984). As will be set forth in greater detail below, it is respectfully submitted that the requisite motivation to combine together the cited references does not exist.

The Advisory Action asserts that “there is motivation to combine [the Pham et al. and Minami et al. references] and it would have been obvious to do so.” However, it is respectfully submitted that ***the requisite motivation to modify Pham et al. in accordance with Minami et al. does not exist, as modifying Pham et al. in view of Minami et al. would frustrate the purpose of Pham et al.***

More particularly, Pham et al. teach a network media access architecture which uses a load-balancing algorithm to ensure that data packets are distributed to one of a plurality of crypto processors 72_{1-N} having a minimal load, thereby minimizing the occurrence of excessive load on any one of a plurality of crypto processor 72_{1-N}. (See, par. [0095]). To facilitate data packet transfer, Pham et al. teach that a new TCP connection is assigned to the crypto processor 72_{1-N} with the least number of open TCP connections. (See, par. [0094]). ***The use of a load-balancing algorithm implies that a non-predetermined (e.g., non-sequential) distribution of data packets is necessary to prevent excessive load on any one processor.*** That is, the load-balancing algorithm will respond to the present or existing load distribution and set up a TCP connection to transfer data packets to a crypto processor 72_{1-N} with the least number of open connections. In contrast, Minami et al. teach a data packet transfer

method which distributes data packets in an alternating manner between two encryption engines. This method does not look at the existing load of the encryption engine, but instead alternates data distribution between encryption engines without regard to load balancing.

In certain situations, if the data distribution method of Minami et al. were applied to the network media access architecture of Pham et al. it **would result in data packets being distributed to encryption engines not comprising the least number data packets, thereby causing an excessive load on a crypto processor during an activity peak**. This is in contrast to the stated objective of the load-balancing algorithm in Pham et al. which specifically attempts, "to minimize the occurrence of excessive load on any one crypto processor 72_{1-N} during an activity peak within the media session." (See, par. [0094], lns. 12-14)., Therefore, **combination of the teachings of Pham et al. with Minami et al.**, as asserted in the Office Action, **would frustrate the purpose of Pham et al.**, making the suggested combination improper. Accordingly, withdrawal of the rejection is respectfully requested.

The Advisory Action alleges that Minami et al. may overcome this problem because it teaches "that it would be beneficial to provide high network communication speed being able to further adapt to multiple communication protocols" (Minami: paragraph 15). However, Applicant asserts that this is a mischaracterization of Pham et al. in view of Minami et al. As described above, the manner in which Pham et al. use a load-balancing algorithm to distribute data packets to processors while Minami uses alternating distribution, and the purpose for which this is done, is what is so different between the references that combining them would frustrate the purpose of Pham et al. The fact that Minami et al. claim multiple communications protocols has nothing to do with internal processor data handling. Even if Minami could handle all the existing communications protocols it would make little difference to an attempt to modify Pham's load-balancing algorithm with Minami's alternating packet distribution. Therefore, **combination of the teachings of Pham et al. with Minami et al.**, as asserted in the

Office Action, **would frustrate the purpose of Pham et al.** Accordingly, withdrawal of the rejection is respectfully requested.

Claims 2-10 depend upon claim 1 and add further limitations thereto. Because Pham et al. do not teach the present invention of claim 1, and Minami et al., Bolt et al., Liu et al., Buer et al. nor Patt et al. remedy the deficiencies of Pham et al., claims 2-10 are believed to be allowable over the reference cited. Accordingly, withdrawal of the rejection is respectfully requested.

ii. No motivation or suggestion is present in the references to combine Pham et al. with Minami et al., and therefore the combination is improper.

To establish a *prima facie* case of obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Further such motivation cannot be conclusory, but instead must be **apparent, and the analysis thereof should be made explicit.** In re Kahn, 441 F.3d 977, 986 (Fed Cir. 2006). As will be set forth in greater below, it is respectfully submitted that the requisite motivation to combine together the cited references does not exist.

Minami et al. do not refer to a secure network or security at any time in the reference. **Nowhere in Minami et al. do they state that the purpose, outcome, or motivation for the invention is a secure network communication via encryption.** In fact, the Minami disclosure is an attempt to create a "hardware solution for handling high network communication speeds" (Minami: Abstract, Paragraphs 15 and 16). Further, Pham et al. are not directed toward secure media encryption; rather, Pham et al. are directed toward network architecture for data security of distributed data storage systems, and security management of the stored data.

The Advisory Action alleges that there is motivation to combine the Pham et al. and Minami et al. references and it would be obvious to do so "as they are both dedicated toward secure network communication via encryption," and that "the Minami

et al. and Pham et al. references are both directed toward security.” However, neither the Pham et al. reference nor the Minami et al. reference teach what is alleged by either the Advisory Action or the Office Action. As described above, Pham et al. are directed toward network storage involving secure data, while Minami et al. are directed toward a hardware device to network communications

The Pham et al. and Minami et al. references are not both directed toward security as alleged by the Advisory and Office Actions. Therefore, it is non-obvious to combine features of the two references. Accordingly, withdrawal of the rejection of claim 1 and its respective dependent claims is respectfully requested.

III. CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be in condition for allowance. Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below. Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, AMDP751US.

Respectfully submitted,
ESCHWEILER & ASSOCIATES, LLC

By /Thomas G. Eschweiler/

Thomas G. Eschweiler
Reg. No. 36,981

National City Bank Building
629 Euclid Avenue, Suite 1000
Cleveland, Ohio 44114
(216) 502-0600